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June 1, 2007

David Riggs  
Riggs, Abney, Neal, Neal, Turpen  
Orbison & Lewis  
5801 N. Broadway, Suite 101  
Oklahoma City, OK 73118

Re: Oklahoma v. Tyson Foods, Inc., et al.

Dear Mr. Riggs,

This letter is written to address the plaintiff's responses to Cal-Maine Foods, Inc.'s March 20, 2007, Interrogatories and Production Requests. Cal-Maine considers the responses to be deficient. This letter will constitute part of Cal-Maine's good faith Rule 26(a)(2)(B) attempt to resolve the discovery dispute arising from the deficient responses. The principal deficiencies of specific responses to specific interrogatories and production requests are addressed below. Cal-Maine reserves the right to seek relief regarding additional deficiencies if necessary.

Interrogatory 1

This interrogatory asks simply whether any of the sixteen former contract growers for Cal-Maine identified in the definitions preceding the interrogatories had ever stored or applied litter in any amount or manner which was contrary to any Oklahoma or Arkansas statutes or regulations, and, if so, what statute or regulations were violated, and the place and nature of the alleged violations. For at least the Oklahoma part of the IRW the plaintiff should have all records, if any, which show any violations by any of the identified contract growers. In response the plaintiff asserted several objections and then directed Cal-Maine to 19,394 pages of records which may or may not answer the question regarding the sixteen identified contract growers.

The first objection is based on an inexplicable view of the attorney-client privilege. The plaintiff does not explain how the violation, or the recording of a violation, of a statutory or regulatory requirement by a contract grower could in any way be construed as an event within any aspect of the attorney-client privilege. The same is

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true for your objection on the basis of work product. I will not try to guess the bases for the assertion of these objections, but they are patently not sustainable.

The plaintiff also asserts a consulting expert objection. The interrogatory, however, does not ask about theoretical violations as conceived by an expert consultant. It asks simply for specific fact details about any actual violations. It asks only the who, where, and how of any alleged violations. No consulting expert exemption is implicated by the interrogatory. This objection is not sustainable.

The plaintiff asserts that it has identified statutes and regulations in the First Amended Complaint which it contends have been violated by the defendants as a group. If the plaintiff has enough knowledge to assert in the FAC that the former contract growers for Cal-Maine have violated statutes and regulations it should be an easy matter for the plaintiff to give a straight-forward answer to the interrogatory without resorting to generalities about all defendants.

After the objections the plaintiff directs Cal-Maine's attention to 19,394 pages of materials that may or may not contain the answers to the interrogatory. This response should be narrowed. First, the plaintiff should expressly state whether or not responsive information about the identified former Cal-Maine contract growers is contained in the 19,394 pages. Second, if such information is in those records, the plaintiff should identify the pages which contain the requested information about the identified former contract growers.

Lastly, the plaintiff describes in general terms its view of its necessary proof in this matter. As interesting as the catalog of intended proof is, it ignores defenses raised by Cal-Maine and other defendants. Proof relating to those defenses is discoverable. In its Twenty Sixth Defense Cal-Maine expressly raised the issue that it never applied any manure in the IRW, and that manure from Cal-Maine chickens which was applied in the IRW was applied lawfully. If Oklahoma has accused any identified former contract grower associated with Cal-Maine for illegally spreading manure in the Oklahoma part of the IRW, or sanctioned them for doing so, Cal-Maine is entitled to discover that. If Oklahoma has never so accused or sanctioned any of those identified former contract growers, Cal-Maine is entitled to discover that as well.

Cal-Maine requests that the plaintiff supplement its response to Interrogatory 1 by directly reciting all, if any instances of violations by any or all of the identified contract growers, and by reciting the specific statutes or regulations which were violated in each instance. Alternatively, Cal-Maine requests that the plaintiff state clearly whether the 19,324 pages of documents reflect instances of violations by the identified contract growers, and then limit and identify the specific pages which contain such information about only those identified contract growers.



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### Interrogatory 2

This interrogatory asks simply whether Cal-Maine Foods, Inc. ever stored or applied litter in any amount or manner which was contrary to any Oklahoma or Arkansas statutes or regulations, and, if so, what statute or regulations were violated, and the place and nature of the alleged violations. The plaintiff's response simply referred to its response to Interrogatory 1. This response is deficient. For the reasons listed above, the objections are not sustainable. Also, Cal-Maine operated only two company-owned layer operations in the IRW. The direction to the 19,394 pages of documents which may or may not contain responsive materials is even more inappropriate with regard to this interrogatory. Cal-Maine requests that the plaintiff supplement its response to Interrogatory 2 in the same manner that it is requested that the plaintiff supplement its response to Interrogatory 1, with the qualification that the response be limited to any alleged violations by Cal-Maine Food, Inc. alone.

### Interrogatory 7

This interrogatory asks if Arkansas has ever failed to meet any obligation it had under the Arkansas River Basin Compact. The plaintiff replied that the inquiry was not relevant to any claim or defense. This is not correct. Among other pertinent defenses, Cal-Maine's Fourth Defense recites the plaintiff's failure to join a necessary party; its Seventh Defense expressly recites that the First Amended Complaint is barred by the provisions of the Compact; and its Eighteenth Defense raises the defense of primary jurisdiction. These defenses clearly make the Compact an issue in this action. This is particularly true given the plaintiff's response to Cal-Maine's Interrogatory 2. In that response the plaintiff admitted that its case depends, at least in part, on the notion that litter which was stored or applied in full compliance with applicable Arkansas law has caused the plaintiff injuries for which it seeks damages in this action. The simple fact that Oklahoma is seeking damages for activity made lawful by Arkansas demonstrates the reality that Oklahoma's lawsuit cannot be properly and fully resolved without directly addressing the State of Arkansas and its regulatory powers.

The Compact requires that any challenge by Oklahoma to the regulatory power of Arkansas, as such regulatory power might affect the streams and rivers at issue, be advanced through the process provided by the Compact. The practical effectiveness, or lack of effectiveness, of pursuing a remedy through the Compact could affect Oklahoma's obligation to pursue a Compact remedy. Arkansas's compliance, or lack of compliance, with obligations imposed upon it through the Compact is, therefore, relevant to at least three defenses raised by Cal-Maine. The plaintiff's response to the



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interrogatory should be supplemented with a direct answer to the question posed by the interrogatory.

#### Interrogatories 8 and 9

These interrogatories ask, respectively, whether the plaintiff made any pre-Complaint estimate, assessment, or quantification of potential adverse social or financial consequences to family farmers, or potential adverse consequences to the economies of Oklahoma or Arkansas, if the plaintiff is successful in any aspect of this litigation. The plaintiff responded that any such adverse consequences are not relevant to any claim or defense in this action. This is plainly not correct.

The First Amended Complaint demands permanent injunctive relief, and the plaintiff has notified the defendants that it intends to seek temporary injunctive relief. In view of the plaintiff's responses to Cal-Maine interrogatories 1 and 2, it is apparent that the plaintiff will likely seek injunctive relief which would cause family farmers to stop using litter in the lawful manner they presently use that litter under both Oklahoma and Arkansas law. It is also apparent that the poultry industry is important to the economies of both Oklahoma and Arkansas. It is plain that the requested injunctive relief could have adverse effects on individual family farmers whose incomes depend in part on raising poultry. It is also plain that the requested injunctive relief could adversely affect the poultry industry and, by direct extension, the economies of both states.

Any demand for injunctive relief carries with it factual inquiries regarding whether the requested injunctive relief would be adverse to the public interest, and whether the threatened injury in the event an injunction is denied outweighs whatever damage the proposed injunction might cause. The plaintiff's objection that these interrogatories should not be answered because the matter inquired about is not relevant is clearly not sustainable. The plaintiff's responses to these interrogatories should be supplemented with direct answers to the question posed by both interrogatories.

#### Production Requests

The plaintiff's responses to the production requests tracked the objections and responses to the corresponding interrogatories. For the reasons stated above, the plaintiff's responses to production requests 1, 2, 5, 6, and 7 should be supplemented to reflect production of the items requested or an affirmative statement that no such items exist.



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Please let me know the plaintiff's position on all of these matters as soon as practical. If the plaintiff disagrees with Cal-Maine's positions I would like to convene a meet-and-confer as quickly as we can. If the issues cannot be resolved by agreement a Rule 26(a)(2)(A) motion will be filed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert E. Sanders', written over a horizontal line.

Robert E. Sanders

RES/vs

cc: counsel of record